IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 988 OF 2006

WITH

CRIMINAL WRIT PETITION NO. 989 OF 2006

WITH

CRIMINAL WRIT PETITION NO. 1043 OF 2006

WITH

CRIMINAL WRIT PETITION NO. 1840 OF 2006

CRIMINAL WRIT PETITION NO. 988 OF 2006

Pradip Madgaonkar @ Bandya Mama .. Petitioner.

vs.

The State of Maharashtra. .. Respondents.

Shri V.T. Tulpule, Sr. Counsel with Shri M.K. Kocharekar for petitioner.

Shri S.R. Borulkar, P.P. with Shri D.S. Mhaispurkar, APP for State.

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WITH

CRIMINAL WRIT PETITION NO. 1043 OF 2006

Vinod G. Asrani. .. Petitioner.

vs.

The State of Maharashtra

& Anr. .. Respondents.

Shri Sushil Kumar, Sr. Counsel with Shri Shirish Gupte with Shri Prakash Naik i/by Mahesh Mule for petitioner.

Shri S.R. Borulkar, P.P. with Shri D.S. Mhaispurkar, APP for State.

WITH

CRIMINAL WRIT PETITION NO. 1840 OF 2006

Jayant Rajaram Mule. .. Petitioner.

vs.

The State of Maharashtra

& Anr. .. Respondents.

Shri Sushil Kumar, Sr. Counsel with Shri Shirish Gupte, Sr. Adv. wuth Shri K. S. Patil with Aditya Kumar i/by Mahesh Mule for

petitioner.

Shri S.R. Borulkar, P.P. with Shri D.S. Mhaispurkar, APP for State.

CORAM : J.N. PATEL, AND
SMT. ROSHAN DALVI, JJ.
DATE : 10th NOVEMBER, 2006.

ORAL JUDGMENT (Per J.N. Patel, J.) :-

. Heard learned Counsel for the Petitioners and learned Public Prosecutor for the State.

2. These four writ petitions can be disposed of by a common order as more or less the petitioners have assailed their prosecution under the Maharashtra Control of Organised Crime Act 1999 (for short MCOC Act of 1999) by seeking quashing of the FIR and the grant of approval under Section 23 (1)(a) and sanction under Section 23(2) of the MCOC Act primarily on the ground that no case has been made out against them relating to their complicity in the organised crime alleged to have been committed by the organised crime syndicate known as Chhota Rajan Gang headed by Rajan Sadashiv Nikalje @ Chhota Rajan @ Nana @ Sheth.

3. The petitioner Pradip Madgaonkar @ Bandya Mama (in Writ Petition No. 988 of 2006) is wanted

in two cases i.e. (1) registered wide crime No. 150 of 2005 for having committed offences under section 3 (1)(ii), 3(2), 3(4), and 3(5) of MCOC Act, 1999 and 384, 385, 386, 387, 504, 506(ii) read with 120(B) of IPC and section 3 read with 25 and 35 of Arms Act, 1959 which was initially registered as crime No. 207 of 2005 by Tilak Nagar Police Station on the basis of the complaint lodged on 10/12/2005 by a builder who deals in real estate in Tilak Nagar area, Chembur, Mumbai. It is the case of the prosecution that the organised crime syndicate led by Chhota Rajan are indulging in extortion of large sums of money from the developers who undertake the redevelopment work of old buildings in Tilak Nagar, Naidu Colony Ghatkopar and other areas of Mumbai by giving them threats of murders and that they would kill the complainant and his family members if their demands are not met and pursuant to which they extorted a sum of Rs. 10 lacs from the said complainant and continued to threaten the complainant and others in order to extort money and have also taken over the construction activities in the area by floating companies like M/s. Khusi Developers Pvt. Ltd., Suraj Infotech Exports Pvt. Ltd., M/s. Khusi Entertainments Services, M/s. Khushi Enterprises and M/s. Sooja Equipments and in so far as the petitioner is concerned, he is associated with continuing unlawful activities on behalf of the above organised crime syndicate right

from extortion of money, contract killing and grabbing of business activities in favour of companies and firms floated by the organised crime syndicate and for channelising the funds into the accounts ostensibly meant to benefit the members of organised crime syndicate and family members of Chhota Rajan.

4. The other case in which the petitioner Pradip Madgaonkar @ Bandya Mama (Writ Petition No. 989 of 2006) is involved relates to the commission of murder of one Sanjay Gupta arising out of business rivalry regarding extension of cable network. The FIR in the case was initially lodged on 21.3.2005 by the employee of Sanjay Gupta Mr. Ankush Kalap which came to be registered as C.R. No. 86 of 2005 at the Nerul Police Station and offence under section 302, 452 of IPC read with Section 34 and 120(B) of IPC read with Sections 3, 25 and 27 of the Indian Arms Act came to be registered against him. The petitioner and his associates subsequently in the course of investigation, it was revealed that in all 12 persons from the organised crime syndicate lead by Chhota Rajan are involved in the said case and only three accused persons could be arrested by the Nerul Police Station and when it was found that the crime was committed by the organised crime syndicate lead by Chhota Rajan, on 12.6.2005 provisions of MCOC Act

came to be applied and after receiving the necessary sanction, charge sheet came to be filed against the petitioner who has been shown to be absconding.

5. In case of the petitioner Vinod G. Asrani (Writ Petition No. 1043 of 2006), it is the case of the prosecution that he is wanted in the case which was initially registered by Tilak Nagar Police Station vide C.R. No. 207 of 2005 as during the course of the investigation it was found that he is working for the organised crime syndicate and has facilitated the appropriation of funds extorted from builders in Tilak Nagar Area, Chembur, Mumbai, at the behest of Pradip Madgaonkar @ Bandya Mama which have been siphoned in the accounts of the family members of Chhota Rajan namely, M/s. Khusi Developers Pvt. Ltd and so on. It is the prosecution's case that the petitioner has acted as an intermediary and had played an active role in the conspiracy and has invested/diverted huge amounts which they have collected by way of extortion and other activities of the organised crime syndicate. The case against the petitioner is that he has helped accused no. 4, Sujata Rajendra Nikalje @ Nani to launder lacs of rupees and acted as money changer by manipulating accounts so that the fruits of organised crime could be enjoyed by members of the organised crime syndicate and their leader Chhota Rajan and his family members including his

minor children.

6. As regards Jayant Rajaram Mule (Writ Petition No. 1840 of 2006) it is the case of the prosecution that he is involved in the case of murder of Sanjay Gupta as member of the organised crime syndicate.

7. We have heard the learned counsel for the petitioners and the learned Public Prosecutor. The main thrust of the arguments on behalf of the petitioners is that there is no sufficient material against the petitioners showing their complicity in the organised crime committed by the organised crime syndicate lead by Chhota Rajan and secondly the Sate has failed to comply with the mandatory requirements of Section 23 (1) and 23 (2) of the MCOC Act, 1999.

8. At the very outset, we would like to make it clear that in so far as the material collected by the investigating agency against the petitioners is concerned and whether it is sufficient to prosecute them under the provisions of MCOC Act, 1999 being a debatable issue and the petitioners who are accused in the case will have sufficient opportunity to contest the same before the Special Court, need not be examined by us. In our view, the only point which requires our consideration is whether the prosecution has complied with the provisions of

section 23 (1) and (2) of MCOC Act, 1999. Otherwise considering the prosecution case against the petitioners we do not think that this is a fit case where this Court should either quash the FIR or quash and set aside their prosecution under the provisions of the said Act before the Special Judge.

9. The main thrust of the argument on behalf of the petitioners on this issue is that for want of proper approval/sanction, no case against the petitioners could be investigated for having committed offences under the MCOC Act of 1999 nor the Special Court can take cognizance of the offences against them. Mr. Sushil Kumar, the learned Senior Advocate who appeared for the petitioner Mr. Vinod Asrani as well as the petitioner Mr. Jayant Rajaram Mule, submitted that in so far as Mr. Vinod Asrani is concerned, his name did not figure in the order dated 13.12.2005 passed by the Joint Commissioner of Police (Crime), Mumbai, under which she granted prior approval under Section 23 (1)(a) of the MCOC Act of 1999 and, therefore, the complicity of the petitioners, or for that reason for want of prior approval the investigating officer would have no jurisdiction to investigate his complicity in the organised crime. It is submitted that though the order passed by the Commissioner of Police who is the competent authority to grant sanction the name of the

petitioner Vinod Asrani does figure when the order came to be passed on 13.12.2005 under section 23(2) of the MCOC Act, 1999 but prior to that as there was no approval to investigate offences under Section 3 (1), 3(2), 3(3) and Section 4 and Section 5 of MCOC Act of 1999 which was passed on 13.12.2005 and at the relevant time when the prosecution had no material to show the complicity of the petitioner, no investigation relating to the involvement of the petitioner in the said crime could have been carried out without seeking prior approval and, therefore, the sanction which came to be granted subsequently stands vitiated in so far as the petitioner Vinod Asrani is concerned. Mr. Sushil Kumar, the learned Sr. Advocate, has placed reliance on the affidavit of Mr. Vinayak Pandurang Kadam, Assistant Commissioner of Police in which it has been categorically stated in paragraph 3 as under :-

> "I state that name of the present petitioner was not appearing in the approval order dated 13.12.2005, his involvement is disclosed as the investigation proceeded. The copy of approval annexed to the petition is not the copy served on the petitioner. The copy of approval annexed to the petition is copy served to the arrested accused along with the charge sheet. In this facts and circumstance, no prejudice is caused to the

> petitioner. The charge sheet in respect of the petitioner is yet to be filed. The petitioner, therefore, cannot raise this ground to challenge the order of approval dated 13.12.2005 granted by the appropriate authority under the M.C.O.C. Act."

This according to Mr. Sushil Kumar, is an admission on the part of the Investigating Officer that the petitioner was not in any manner concerned with the offences under the MCOC Act which has been registered against the other co-accused in the case. Mr. Sushil Kumar strenuously urged before this Court that for want of approval no investigation could be carried out against the petitioner and placed emphasis on proviso to sub-section 3(a) of Section 20 of the MCOC Act, 1999 which reads as under :-

> "Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation." (emphasis supplied)

It is, therefore, submitted that the approval contemplated under Section 23 (1)(a) of the MCOC Act, 1999 is against an individual and as there was no prior approval granted against the petitioner, the investigating officer could not have proposed to charge sheet the petitioner and the sanction granted by the Commissioner of Police on the basis of such proposal is illegal being not in accordance with the procedure established by law. In support of his contention Mr. Sushil Kumar has placed reliance on the case of Rambhai Nathabhai Gadhvi and others vs. State of Gujarat, (1997) 7 SCC 744, Dilawar Singh vs. Parvinder Singh alias Iqbal Singh and another, (2005) 12 SCC 709, Prakash Kumar alias Prakash Bhutto vs. State of Gujarat and other connected appeals decided by Five Judge Bench of the Supreme Court, 2005 SCC (Cri) 518 and, Mukhtiar Ahmed Ansari vs. State (NCT OF DELHI), 2005 5 SCC 258.

10. As regards the contention on behalf of the petitioner Vinod Asrani that his name did not figure in the prior approval given by the Joint Commissioner of Police on 13.12.2005 as contemplated under Section 23 (1)(a) of the MCOC Act, 1999, it is contended by the learned Public Prosecutor that it does not in any manner vitiate the investigation conducted after seeking prior approval against the co-accused who have been found to be members of the

organised crime syndicate and concerned with the offences committed for which they have been charge sheeted. According to the learned Public Prosecutor, what is provided under Section 23 (1) (a) relates to information about the commission of an offence of an organised crime under the MCOC Act and at the stage such an information is received for the commission of an offence of organised crime, it is not necessary that it would disclose names of all the members of the organised crime syndicate who have been found to have been indulging in the organised crime of which information has been received and what is required to be scrutinised is the nature of information about the commission of an offence about the organised crime by the officer of the rank of Deputy Inspector General of Police without whose prior approval the offences under the MCOC Act of 1999 could not have been registered. It is submitted that it is after the prior approval of the Deputy Inspector General of Police is obtained, the offences under the MCOC Act of 1999 can be investigated by police officer not below the rank of Deputy Superintendent of Police. This, according to Mr. Borulkar, the learned Public Prosecutor is provided by way of a check on the police officer investigating into an offence. It is submitted that at the time the information is received, the Deputy Inspector General of Police has to be only satisfied from the information disclosed that organised crime

has been committed as defined under MCOC Act of 1999 by an organised crime syndicate and it is only after further investigation that involvement of other members of the organised crime syndicate can be revealed. On the other hand, when it comes to taking cognizance of any offence under this Act which is a stage when charge sheet is to be filed against the accused persons the Special Court can take cognizance only with the previous sanction of the competent authority and sanction for prosecution is required to be obtained with regard to specific accused and in the present case the sanction order does mention the name of the petitioner Vinod Goverhandas Asrani @ Vinod Bookie @ Vinod Chembur @ Vinod Sindhi being the member of organised crime syndicate headed by Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana for having committed offences punishable under section 3 (1)(ii), 3(2), 3(4) and 3(5) of the MCOC Act, 1999. It is submitted that the name of the petitioner figured in the course of investigation and as the petitioner is not yet arrested, additional charge sheet which shows the complicity of the petitioner is yet to be filed. In order to appreciate his contention, the learned Public Prosecutor has also made available the additional charge sheet showing the complicity of the petitioner.

11. In so far as the petitioner Pradip

Madgaonkar @ Bandya Mama is concerned, that issue does not arise as his name figures in the list of suspects when prior approval came to be accorded under section 23 (1) of the MCOC Act, 1999 and when sanction came to be granted by the Commissioner of Police under section 23 (2) of the said Act. The learned Public Prosecutor has also pressed into service various decisions of the Supreme Court on the point, to mention, the case of the State of West Bengal and Anr. vs. Mohammed Khalid, AIR 1995 SC 785 in respect of the Court's power to interfere in the matter of sanction to prosecute granted under the TADA (P) Act, 1987 in its writ jurisdiction, and Jayawant Dattatraya Suryarao vs. State of Maharashtra along with other Criminal Appeals, (2001) 10 SCC 109.

12. In the case of petitioner Jayant Mule, it is contended that initially the petitioner had some dispute with the deceased Sanjay Gupta in his capacity as Manager of Hinduja Cable Network Group but then the same was settled and that there is no material to show the association of the petitioner with the organised crime syndicate of Chhota Rajan and, therefore, he has been falsely implicated in this case with the aid of Section 120 (B) of IPC and, therefore, proceedings against him deserve to be quashed. We have already expressed that we are not examining the material collected in the course

of investigation to assess the complicity of the petitioner for which he will get ample opportunity to challenge before the Special Court as it comes within the realm of debatable issue which requires to be considered in the back-drop of material produced by the prosecution in the form of charge sheet before the Special Court which will be in a better position to appreciate the contention of the said petitioner.

13. On considering the submissions made on behalf of the petitioners and the authorities cited before us what we find is that in so far as the petitioner Pradip Madgaonkar @ Bandya Mama is concerned, Mr. Tulpule appearing for him has failed to satisfy this Court that both the cases against the petitioner deserve to be quashed and set aside for want of material showing his complicity in the crime or for any technical lapses as regards obtaining of approval and sanction from the competent authority as contemplated under section 23 of the MCOC Act, 1999. The authorities cited by Mr. Tulpule in no manner assist the case of the petitioner and we refrain from making any observation on merits as to the material placed before us as that may unnecessarily prejudice the case of the petitioner before the Special Court and, therefore, two petitions filed by Pradip Madgaonkar @ Bandya Mama i.e. Writ Petition No. 988 of 2006

and Writ Petition No. 989 of 2006 deserve to be dismissed as a result of which the petitioner Pradip Madgaonkar @ Bandya Mama shall surrender to his bail bond within 15 days of the pronouncement of this judgment. On his failure to comply with the bail bond i.e. personal bond and surety bond to stand forfeited and the State will be at liberty to take recourse to the provisions of the Cr.P.C. read with MCOC Act, 1999 for causing his arrest and procuring his presence.

14. In so far as the case of the petitioner Vinod Asrani as to the second limb of argument canvassed by Mr. Sushil Kumar, the learned Senior Advocate appearing for the petitioner, that the Commissioner of Police could not grant sanction under Section 23 (2) against the petitioner as the case against him has not been investigated without seeking prior approval under sub-section (1) of Section 23 of MCOC Act, 1999 is concerned, it cannot be accepted as we do not find that the sanction accorded against the petitioner by the Commissioner of Police is vitiated for want of prior approval which is not the pre-requisite for granting of sanction.

15. Section 23 of the MCOC Act, 1999 reads as under :-

"23. Cognizance of, and investigation into, an offence, -- (1) Notwithstanding anything contained in the Code,--

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police.

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

16. The plain reading of the said section clearly indicates the safeguards it provides against the misuse/abuse of the provisions of the MCOC Act, 1999 by the State and, therefore, it clearly lays

down in so far as the first part is concerned that no information about the commission of offence of organised crime under this Act shall be recorded by police officer without prior approval of the police officer not below the rank of Deputy Inspector General of Police and that no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police which in our view regulated the registering of an offence as an organised crime under the MCOC Act, 1999 and its investigation. The contention of Mr. Sushil Kumar, the learned senior advocate appearing for the petitioner, that the information about the commission of an offence of an organised crime has to be qua all the persons who are found to be involved in commission of such an offence cannot be accepted as sub-section (1)(a) of Section 23 of the said Act does not say so. Mr. Sushil Kumar has referred to the proviso of Section (3)(a) of Section 20 of the MCOC Act of 1999 to make a point that unless the information is in respect of the persons found having committed an organised crime, there cannot be any blanket approval as even in case of all persons who have been found to be absconding or concealing themselves they cannot be apprehended, the proviso requires that the date of registering offence against such person who has absconded or is concealing himself would rather go to indicate that

the information received has to be against such person which would necessarily require approval before offences under MCOC Act are registered on the basis of any information for having committed an organised crime punishable under the MCOC Act, 1999 as held in Mukhtiar Ahmed Ansari's case (cited supra). In the absence of any prior approval either in writing or oral the proceedings will stand vitiated and, therefore, in the case of Vinod Asrani when the approval was granted his name did not figure in the list of persons against whom information was received of having committed or associated with organised crime and therefore he could not have been subsequently arrested without prior approval which is admittedly not there in his case. With all humility at our command, the decision in Mukhtiar Ahmed Ansari's case (cited supra) cannot be misconstrued and read so as to mean that after an approval has been granted by the police officer not below the rank of Deputy Inspector General of Police as required under sub-section (1)(a) of Section 23 of registering an offence of organised crime under this Act if in the course of investigation of the offence of organised crime committed by organised crime syndicate, complicity of other members of the organised crime syndicate including the persons who have been found to have aided and abetted the organised crime committed by the organised crime syndicate is seen,

the investigating officer will have to seek further approval in a case of such a person/suspect. Therefore, in our view once an approval has been granted as contemplated under sub-section (1)(a) to Section 23 in respect of information about the commission of offence of organised crime under this Act, there is no requirement under the law to seek further approval in the course of investigation of the organised crime which may lead to collection of further material and disclosure of complicity of persons whose names and involvement did not figure at the time the initial information about the commission of an offence about the organised crime under the MCOC Act comes within the knowledge of the investigating agency if it is arising out of the commission of the offence and in the course of same transaction which was revealed by the information about the commission of an offence of an organised crime under the said Act. Otherwise it would lead to an absurdity that with the progress of investigation if additional material is collected and involvement of persons whose complicity was not known at the time the initial information was received is seen, the police officer who is investigating the offence will have to again go and seek prior approval qua the person whose involvement in the offence is subsequently found. The protection/safeguard relates to the initial information about the commission of an offence about

organised crime under this Act which requires prior approval of the police officer not below the rank of Deputy Inspector General of Police for registering the case under the provisions of MCOC Act of 1999. Mukhtiar Ahmed Ansari's case also stands distinguished on facts. His prosecution stood vitiated under the provisions of TADA (P) Act, 1987 as no prior approval u/s 20-A(1) was taken at all to register offences under the said Act against him and he was the sole accused who was put on trial before the Designated Court under the said Act which is not so in the case of the Petitioner. Prior approval has been taken under sub-section (1)(a) of Section 23 of the MCOC Act of the competent authority on receipt of the information and thereafter offences under MCOC Act, 1999 came to be registered and investigation was conducted.

17. It is not that once the police gets prior approval as contemplated in sub-section (1)(a) of Section 23 in respect of information of commission of an offence about the organized crime, there is no further check on them. It will otherwise mean a blanket approval so that they can rope in any person they desire without his complicity being scrutinised by superior police officer of the rank of Deputy Inspector General of Police. Sub-section (2) of Section 23 takes care of such a contingency as sanction is required before a person is required to

be charge sheeted and then only the Special Court can take cognizance of an offence under this Act. It cannot be done without the previous sanction of the police officer not below the rank of Additional Director General of Police and the stage when the charge sheet is required to be filed the investigating officer will have to satisfy the Additional Director General of Police to accord sanction qua the persons who are proposed to be charge sheeted before the Special Court and the law on this issue is well settled. Sanction for prosecution is required to be obtained with respect to specific accused as this being a special statute and hence maxim generalia specialibus non derogant would apply and it has a overriding effect over the general provisions of Section 190 or Section 319 of Criminal Procedure Code and the Special Court cannot take cognizance of the offence against the person to whom no sanction is granted by the sanctioning authority. The provision of sanction is the most salutary safeguard. The sanctioning authority is placed somewhat in the position of a sentinel at the door of criminal Courts in order that no irresponsible or malicious prosecution can pass the portals of Court of Justice and, therefore, at the subsequent stage before a person is exposed to prosecution, his complicity is to be adjudged by the sanctioning authority. Therefore, we do not find any error merely because name of the petitioner

Vinod Asrani did not figure at the initial stage about the commission of offence of organised crime i.e. in Crime No. 150 of 2005 of DCB, CID, but subsequently on investigation when the investigating officer submitted his report dated 1.6.2005 along with papers of investigation, the prior approval of the Joint Commissioner of Police (Crime), Mumbai, dated 13.12.2005 was obtained for applying the provisions of the MCOC Act, 1999 to the said case, the Commissioner of Police granted sanction against the petitioner for his prosecution in the category of wanted accused vide order dated 24.3.2006. Therefore, we do not find any merit in the petition filed by Vinod Asrani and it stands dismissed.

18. In so far as the petition filed by Jayant Mule is concerned for quashing the proceedings against him also does not require any consideration for want of merit. Therefore, this petition also stands dismissed.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)